# Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

# and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 10 MAY 12, 1976 No. 19



*This issue contains*

T.D. 76–115 through 76–120

Protest abstracts P76/102 through P76/113

Reap. abstracts R76/57 through R76/59



DEPARTMENT OF THE TREASURY
U.S. Customs Service

## NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.



For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 85 cents (single copy). Subscription price: $43.70 a year; $10.95 additional for foreign mailing.

# U.S. Customs Service

(T.D. 76-115)

*Manmade Fiber Textiles—Restriction on Entry*

Restriction on entry of manmade fiber textiles manufactured or produced in Haiti

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C., April 21, 1976.*

There is published below the directive of March 31, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction of entry into the United States of manmade fiber textiles in category 233, manufactured or produced in Haiti. This directive amends, but does not cancel, that Committee's directive of October 24, 1975 (T.D. 75-283).

This directive was published in the FEDERAL REGISTER on April 6, 1976 (41 FR 14585), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN
*for* JOHN B. O'LOUGHLIN,
*Director,*
*Duty Assessment Division.*

---

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

*March 31, 1976.*

COMMISSIONER OF CUSTOMS
*Department of the Treasury*
*Washington, D.C. 20229*

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on October 24, 1975 by the Chairman, committee for the Imple-

mentation of Textile Agreements, regarding imports into the United States of man-made fiber textile products in Categories 233 and 238, produced or manufactured in Haiti.

Under the terms of Annex B of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on April 1, 1976, and for the twelve-month period beginning on August 29, 1975 and extending through August 28, 1976, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 233, produced or manufactured in Haiti, in excess of an adjusted level of restraint of 86,742 dozen.[1]

The actions taken with respect to the Government of Haiti and with respect to imports of man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL *for* ALAN POLANSKY,
*Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce*

---

(T.D. 76-116)

*Manmade Fiber Textiles—Restriction on Entry*

**Restriction on entry of manmade fiber textiles manufactured or produced in Mexico**

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C., April 21, 1976.*

There is published below the directive of March 31, 1976, received by the Commissioner of Customs from the Chairman, Committee

[1] The level of restraint has not been adjusted to reflect any entries made after August 29, 1975.

for the Implementation of Textile Agreements, amending the levels of restraint for certain manmade fiber textile products manufactured or produced in Mexico. This directive further amends, but does not cancel, that Committee's directive of June 2, 1975 (T.D. 75–154).

This directive was published in the FEDERAL REGISTER on April 5, 1976 (41 FR 14429), by the Committee.

(QUO–2–1)

JAMES D. COLEMAN,
*for* JOHN B. O'LOUGHLIN,
*Director,*
*Duty Assessment Division.*

---

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

*March 31, 1976.*

COMMISSIONER OF CUSTOMS
*Department of the Treasury*
*Washington, D.C. 20229*

DEAR MR. COMMISSIONER:

On June 2, 1975 the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning May 1, 1975 and extending through April 30, 1976 of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 7(a)(ii) of May 12, 1975, between the Governments of the United States and Mexico, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to amend,

---

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of May 12, 1975 between the Governments of the United States and Mexico which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by specified percentages; (2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

effective on March 31, 1976, the levels of restraint established for Categories 219, 225, 235, and 238 to the following amounts:

| *Category* | *Amended Twelve-month Level of Restraint* [1] | |
|---|---|---|
| 219 | 687,602 | dozen |
| 225 | 2,012,828 | dozen |
| 235 | 359,004 | dozen |
| 238 | 1,048,996 | dozen |

The actions taken with respect to the Government of Mexico and with respect to imports of man-made fiber textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL *for* ALAN POLANSKY,
*Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce*

---

(T.D. 76-117)

*Manmade Fiber Textiles—Restriction on Entry*

Restriction on entry of manmade fiber textiles manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C., April 21, 1976.*

There is published below the directive of April 8, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, amending the level of restraint for manmade fiber textiles, category 237, manufactured

[1] The levels of restraint have not been adjusted to reflect any entries made after April 30, 1975.

or produced in the Republic of Korea. This directive amends, but does not cancel, that Committee's directive of September 25, 1976 (T.D. 75–255).

This directive was published in the FEDERAL REGISTER on April 13, 1976 (41 FR 15441), by the Committee.

(QUO–2–1)

JAMES D. COLEMAN,
*for* JOHN B. O'LOUGHLIN,
*Director,*
*Duty Assessment Division.*

---

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

*April 8, 1976.*

COMMISSIONER OF CUSTOMS
*Department of the Treasury*
*Washington, D.C. 20229*

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on September 25, 1975 which directed you to prohibit entry during the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 7(a)(ii) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, between the Governments of the United States and the Republic of Korea, and in accordance

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975 between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

with the provisions of Executive Order 11651 of March 3, 1972, you are directed to amend, effective on April 8, 1976, the level of restraint established for Category 237 to 147,922 numbers.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
*Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce*

---

(T.D. 76-118)

*Sales between Selected Purchasers*

U.S. Customs Service position on sales to selected purchasers in light of the decision in *J. L. Wood v. United States*, C.A.D. 1139 (1974)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C., April 26, 1976.*

The decision of the Court of Customs and Patent Appeals in *J. L. Wood v. United States*, C.A.D. 1139 (1974) concerned the criteria to be used in determining whether the price to a selected purchaser fairly reflects the market value so as to establish export value within the meaning of section 402(b) and (f)(1)(B), Tariff Act of 1930, as amended.

In examining the scope of evidence to be used in determining whether a sale to a selected purchaser "fairly reflects the market value," the court concluded "that export value be determined by considering only the exporting country's market for exportation to the United States." In this regard, the court overruled *United States v. Acme Steel Co.*, 51 C.C.P.A. 81, C.A.D. 841 (1964), "to the extent that

it approved consideration of sales in the domestic market of the exporting country in the determination of export value." Additionally, footnotes 11, 12, and 13 to the decision and the accompanying text could be read as indicating the Court's disapproval of testing the price to the selected purchaser against prices to third countries or against the costs of producing the merchandise.

While the court did not discuss in detail what type of evidence of market value would be appropriate, its decision on the facts of the case provides some insight into its thinking. In pertinent part the court ruled:

> In this case, we have all necessary market evidence, since Carter, Ltd., sells for export to selected purchasers in the United States—Carter, Inc., and the OEMs. The price to the OEMs and to Carter, Inc., is the same. Because the OEMs are unrelated to Carter, Ltd., or Carter, Inc., further proof of what price the merchandise is able to command in the market is not needed.

The Customs Service interprets this ruling to mean that where there are sales to a related selected purchaser and to several unrelated selected purchasers, or merely sales to several unrelated selected purchasers at the same price, then it is bound to look only to the exporting country's market for exportation to the United States. The Customs Service acquiesces in this view, although the mere fact that the merchandise is sold to several unrelated selected purchasers at the same price does not, ipso facto, make that price the export value of the merchandise.

It should be noted, however, that if there were sales for export to the United States of such or similar merchandise by other manufacturers, these sales would also be competent evidence as to whether a price fairly reflected the market value. Further, if an examination of this type of evidence leads to the conclusion that a given price was not a fair reflection of market value, this evidence could be used to establish an export value under section 402(b) and (f)(4), Tariff Act of 1930, as amended.

The more difficult question is the position which should be taken when the "necessary market evidence" is not available; *i.e.*, when there are sales only to related selected purchasers, or sales only to one unrelated selected purchaser. Then the criterion applied by the court is not available, for there would be *no* "market" for export to the United States outside of the sale in question. This leaves three possible courses of action: (1) to automatically accept the price as establishing export value, (2) to automatically reject the price for lack of evidence that it fairly reflects the market value; or, (3) to use other available evidence for comparison purposes.

205-322—76——2

The Customs Service is of the opinion that Congress enacted section 402(f)(1)(B) specifically to preclude the automatic acceptance or rejection of a sales price to a selected purchaser. Therefore, in those instances where the "necessary market evidence" does not exist, the Customs Service is required to look to whatever other evidence might be available for comparison purposes. Such evidence might include, but is not necessarily limited to, any of the following: (1) circumstances of sale, *e.g.*, the manner in which the price was determined; (2) the relative mark-ups of the exporter and the importer; (3) quantities and level of trade; (4) home market sales; (5) sales to third countries; or (6) cost of producing the merchandise. This evidence would be used only for comparison purposes, and if it does not lead to the acceptance of the price at which the goods are invoiced, it would not be used to establish a substitute export value.

(CLA-2-R:CV)

LEONARD LEHMAN,
*Acting Commissioner of Customs.*

(T.D. 76–119)

*Drawback—Customs Regulations amended*

Section 22.43, Customs Regulations, relating to drawback verifications, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C.*

## TITLE 19—CUSTOMS DUTIES

### CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 22 – DRAWBACK

Section 22.43 of the Customs Regulations (19 CFR 22.43) provides that drawback verifications are to be performed by the Customs Agency Service (now known as the Office of Investigations). However, as a result of the establishment of Regulatory Audit Divisions in each Customs region, drawback verifications have become the responsibility of the regional commissioners of Customs and will be within the immediate jurisdiction of the Director, Regulatory Audit Division, in each region.

Accordingly, in order to conform the Customs Regulations with the organizational change described above, to further clarify the drawback verification function, and to expressly provide in the Customs Regulations that drawback claims will not be liquidated until the first claim for drawback has been verified, as has been Customs practice, section 22.43 of the Customs Regulations (19 CFR 22.43) is amended to read as follows:

**§ 22.43 Verification of drawback claims.**

(a) The first claim filed under a drawback rate shall be verified by the regional Regulatory Audit Division under the jurisdication of the regional commissioner in whose region the claim is filed when the factory covered by the claim is also located in the same region. No subsequent claim for drawback shall be liquidated until the first claim for drawback has been verified.

(b) If the claim is filed in one region and one or more of the factories covered by the claim is located in another region, the regional commissioner receiving the claim, in addition to taking the action required by paragraph (a) of this section, shall forward a copy of the claim and a copy of the relevant drawback statement and drawback rate, together with a request for verification, to the

regional commissioners in whose regions the other factories are located.

(c) The verifying official shall verify the claim and material set forth in the related drawback statement. Similar action shall be taken upon receipt of the first drawback claim filed under an amendment of a drawback rate. Verification as to drawback rates and amendments shall include an examination of the manufacturing records and all other accounting and financial records relating to the transaction.

(d) Schedules, supplemental schedules, and supplemental advisory schedules, when not incorporated in a drawback statement or supplemental statement, shall be verified when received.

(e) It is the responsibility of the regional commissioner receiving drawback documents to determine if verification is required. It is also his responsibility, when verification is required, to initiate the necessary verification action described in paragraphs (a) and (b) of this section.

(f) Regional commissioners shall refer drawback documents to the regional Regulatory Audit Division for verification whenever such reference is believed to be required for the orderly and efficient administration of the drawback law and regulations, and occasionally in any case.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 66, 1624))

Because this amendment merely conforms the Customs Regulations to a transfer of functions within the United States Customs Service or conforms the Customs Regulations to existing Customs practices, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

*Effective date.* This amendment shall be effective upon publication in the FEDERAL REGISTER.

(ADM-9-03)

ROLAND RAYMOND,
*Acting Commissioner of Customs.*

Approved April 20, 1976,
DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[Published in the FEDERAL REGISTER April 30, 1976 (41 FR 18071)]

(T.D. 76-120)

*Customs Reference Facilities—Customs Regulations amended*

Section 103.1, Customs Regulations, amended, to reflect changes in the addresses of public reference facilities

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C.*

## TITLE 19—CUSTOMS DUTIES

### CHAPTER I—UNITED STATES CUSTOMS SERVICE

#### PART 103 — AVAILABILITY OF INFORMATION

Section 103.1 of the Customs Regulations (19 CFR 103.1) sets forth the addresses of the various offices where the United States Customs Service maintains a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and Part 103 of the Customs Regulations may be inspected and copied.

The addresses of the United States Customs Service (Headquarters) and Region I–Boston, have changed. It is therefore necessary to amend section 103.1 to reflect these changes.

Accordingly, the addresses of the United States Customs Service (Headquarters) and Region I–Boston, set forth in section 103.1 of the Customs Regulations (19 CFR 103.1) are amended to read as follows:

**§ 103.1 Public reference facilities.**

* * * * *

United States Customs Service
(Headquarters)
1301 Constitution Avenue, N.W.
Washington, D.C. 20229.

Region I—Boston
100 Summer Street, Suite 1819
Boston, Mass. 02110.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Because these amendments merely conform the Customs Regulations with certain administrative changes, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

(T.D. 76-120)

Customs Reference Facilities—Customs Regulations amended

Section 103.1, Customs Regulations, amended, to reflect changes in the addresses of public reference facilities

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 103 — AVAILABILITY OF INFORMATION

Section 103.1 of the Customs Regulations (19 CFR 103.1) sets forth the addresses of the various offices where the United States Customs Service maintains a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and Part 103 of the Customs Regulations may be inspected and copied.

The addresses of the United States Customs Service (Headquarters) and Region 1—Boston, have changed. It is therefore necessary to amend section 103.1 to reflect these changes.

Accordingly, the addresses of the United States Customs Service (Headquarters) and Region 1—Boston, set forth in section 103.1 of the Customs Regulations (19 CFR 103.1) are amended to read as follows:

§ 103.1 **Public reference facilities.**

* * * * *

United States Customs Service
(Headquarters)
1301 Constitution Avenue, N.W.
Washington, D.C. 20229.

Region 1—Boston
100 Summer Street, Suite 1810
Boston, Mass. 02110.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Because these amendments merely conform the Customs Regulations with certain administrative changes, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

*Effective date.* This amendment shall become effective upon publication in the FEDERAL REGISTER.

(ADM-9-03)

ROLAND RAYMOND,
*Acting Commissioner of Customs.*

Approved April 20, 1976,
DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[Published in the FEDERAL REGISTER April 30, 1976 (41 FR 18071)]

# Decisions of the United States Customs Court



---

## *Abstracts*

## *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, *April 19, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
*Commissioner of Customs.*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Par. or Item No. and Rate | Par. or Item No. and Rate | | |
| P76/102 | Richardson, J. April 12, 1976 | Otto Kadmon, Inc., et al. | 66/33089, etc. | Item 653.40 or 653.39 19% | Item 688.40 11.5% or 9% | Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111) | New York Tree tops, Christmas decorations, etc.; non-illuminating, electrical, nonutilitarian articles |
| P76/103 | Richardson, J. April 12, 1976 | Otto Kadmon, Inc. | 67/31011, etc. | Item 653.40 19% | Item 688.40 11.5% | Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111) | New York Tree tops, Christmas decorations, etc.; non-illuminating, electrical, nonutilitarian articles |
| P76/104 | Richardson, J. April 12, 1976 | New York Merchandise Co., Inc. | 69/9428, etc. | Item 653.40 or 653.39 19% | Item 688.40 11.5% or 10% | Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111) | San Diego Electrical bird cages, etc.; decorative, nonilluminating, nonutilitarian merchandise |
| P76/105 | Richardson, J. April 13, 1976 | C. J. Tower & Sons of Niagara, Inc. | 69/44525, etc. | Item 657.50 18% | Items 620.32/ 911.23 Free of duty | U.S. v. C. J. Tower & Sons of Buffalo, Inc. a/c Metco, Inc. (C.A.D. 1163) | Buffalo-Niagara Falls Composite powder |
| P76/106 | Landis, J. April 13, 1976 | Bronton Apparel, Ltd. | 75-5-01318 | Item 382.81 25¢ per lb. + 27.5% | Item 376.56 16.5% | Agreed statement of facts | New York Girls' snorkel jackets |
| P76/107 | Landis, J. April 13, 1976 | Morris Friedman & Co. | 74-3-00701 | Item 737.90 21% | Item 206.97 10% | Agreed statement of facts | Philadelphia Mushroom magnets |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Par. or Item No. and Rate | Par. or Item No. and Rate | | |
| P76/108 | Richardson, J. April 14, 1976 | J. Kinderman and Sons et al. | 73-2-00458, etc. | Item 653.95 8.5% Item 653.39 19% | Item 688.40 9%, 8% or 5.5% | Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111) | Philadelphia Tree tops, Christmas decorations, etc.; non-illuminating, electrical, non-utilitarian articles |
| P76/109 | Richardson, J. April 14, 1976 | Metco, Inc., et al. | 69/44501, etc. | Item 657.50 18% | Items 620.32/ 911.23 Free of duty | U.S. v. C. J. Tower & Sons of Buffalo, Inc. a/c Metco, Inc. (C.A.D 1163) | Buffalo-Niagara Falls Composite powder |
| P76/110 | Richardson, J. April 14, 1976 | Metco, Inc., et al. | 69/44539, etc. | Item 657.50 18% | Items 620.32/ 911.23 Free of duty Item 620.32 1.25¢ per lb. | U.S. v. C. J. Tower & Sons of Buffalo, Inc. a/c Metco, Inc. (C.A.D. 1163) | Buffalo-Niagara Falls Composite powder |
| P76/111 | Richardson, J. April 14, 1976 | C. J. Tower & Sons of Buffalo, a/c Metco, Inc. | 71-9-01114, etc. | Item 657.50 12.5% or 10.5% | Item 620.32 Free of duty | U.S. v. C. J. Tower & Sons of Buffalo, Inc. a/c Metco, Inc. (C.A.D. 1163) | Buffalo-Niagara Falls Composite powder |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P76/112 | Richardson, J. April 14, 1976 | Wheeler & Miller | 73-7-01816 | Item 545.67 16.5% and 14% (as entireties) | Item 653.39 19%; export value: $2,640 (2,400 fixtures at $1.10 ea.); $15,600 (12,000 fixtures at $1.30 ea.) Item 687.10 6% or 5.5%; export value: $4,800 (2,400 bulbs at $2 ea.); $20,040 (12,000 bulbs at $1.67 ea.) | Mobilite, Inc. v. U.S. (C.R.-D. 73-11) | San Francisco Light fixtures and bulbs imported in same shipment, but separately packaged; not entireties |
| P76/113 | Landis, J. April 14, 1976 | National Rubber Company, Limited | 74-12-03522 | Item 774.60 8.5% | Item 692.27 4% | Agreed statement of facts | Buffalo "Splash guards" and "mud flaps" |

# Decisions of the United States Customs Court

## *Abstracts*

## *Abstracted Reappraisement Decisions*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R76/57 | Landis, J. April 15, 1976 | A & A Trading Corp. | 72-11-02205 | Export value | Appraised values less amounts described as commission which were included in the appraised values by customs | Judgment on the pleadings | San Francisco Electrical articles |
| R76/58 | Landis, J. April 15, 1976 | A & A Trading Corp. | 74-3-00621 | Export value | Appraised values less amounts described as commission, purchasing agent's commission, or buying commission which were included in appraised values by customs | Judgment on the pleadings | Seattle Electrical articles |
| R76/59 | Landis, J. April 15, 1976 | Florsheim Shoe Co., Div. of Interco, Inc. | 73-3-00818, etc. | Foreign value | Appraised unit values less 1% cash discount, packed | Agreed statement of facts | Chicago Calf upper leather, kid upper leather, kid lining leather |

**Judgment of the United States Customs Court in Appealed Case**

APRIL 16, 1976

APPEAL 76–5.—United States *v.* Mego Corp.—VINYL SPONGE LEATHER GLOVES—VINYL LEATHER BOXING GLOVES—TOYS, OTHER—BASEBALL GLOVES—BOXING GLOVES—TSUS. C.D. 4614. Appeal dismissed March 24, 1976.

---

**Appeal to United States Court of Customs and Patent Appeals**

APPEAL 76–17.—United States *v.* Ataka America, Inc.— FIBERSCOPE—MEDICAL-OPTICAL INSTRUMENT—ELECTRO-MEDICAL APPARATUS—TSUS. Appeal from C.D. 4637.

Merchandise described on the invoices as "Olympus Upper GI Photofiberscope, Model GIF–D, without CLE [a specially designed light power unit used in connection with the fiberscope] and FIT [a camera specially designed for use in connection with the fiberscope]" was assessed at 25 percent ad valorem under the provision in item 709.05, Tariff Schedules of the United States, as modified by T.D. 68–9, for other medical-optical instruments and appliances and parts thereof. Plaintiff-appellee claimed that the merchandise was more than a medical-optical instrument and properly dutiable at 6 percent under the provision in item 709.17, as modified, for other electro-medical apparatus and parts thereof. The Customs Court sustained plaintiff's claim.

It is claimed that the Customs Court erred in finding and holding that the merchandise is properly classifiable under item 709.17, *supra;* in not finding and holding that it is properly classified under item 709.05, *supra;* in finding and holding that the merchandise is "more than" an optical instrument; in not finding and holding that under the main superior heading for medical, dental, surgical and veterinary instruments and apparatus, the merchandise is properly classifiable as optical instruments and appliances rather than as "other" than optical instruments and appliances; in not finding and holding that the statutory definition of "optical instruments" as contained in headnote 3 to part 2, schedule 7 of TSUS is applicable to the subject merchandise and in not finding and holding that the subject merchandise is within that definition; in not finding and holding that the merchandise is an instrument which incorporates one or more optical elements, and that the incorporated optical element is not solely used for viewing a scale or for some other subsidiary purpose; in finding and

holding that the previously enunciated judicial tests for optical instruments are "inappropriate" in the instant action and, therefore, are not to be followed in determining the proper classification of the merchandise; in finding and holding that the record in the instant action supported a finding that the merchandise is used 80 to 100 percent of the time with the ancillary capabilities in operation, which typified the use of the subject merchandise; in not finding and holding that the dominant or primary use of the subject merchandise lies in the employment of its optical features; in finding and holding that the pleadings estopped defendant from contesting the correctness of plaintiff's claimed classification; in not finding and holding that the merchandise, if "more than" medical-optical apparatus, is also "more than" "electro-medical apparatus"; and in finding and holding that the additional photographic capability of the subject merchandise is "optical" in nature.

# Index

## U.S. Customs Service



## Customs Court

UNITED STATES
GOVERNMENT PRINTING OFFICE
PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375


U.S. GOVERNMENT PRINTING OFFICE: 1976